

ABSTRACT

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Judges should decide cases in accordance with applicable procedures. He should refer to existing laws, but judges are allowed to make ijtihad to decisions more equitable and more serious benefits. In response to existing problems and deal with the changing times that demand a shift in values in society, it is necessary to establish laws that can meet the values of justice for seeking justice, because often there is a legal product that assessed value does not meet the required community justice. It has become a necessity for judges to ijtihad in completing each case to ensure legal certainty for the seeker of justice. To achieve this goal, the judges are not depicted as a man who only accept orders from superiors, in the sense that the judges only being able to understand and apply the law of finished or finished, but the judge described as unable to complete material treasure fiqhiyah law in General and religious kususnya. In this picture the judge is the one who should be active and to find a law that has not been available in front of him, among others, with a lot of reading even able to establish new laws that are not covered by existing references.

Ijtihad judges in deciding cases of late rarely found. The majority of the judges who decided the case without conducting ijtihad because it is considered that the existing legislation is adequate to resolve the issue at hand. However, closer examination of real cases that went to the Islamic Court in the recent very varied and sometimes has a chronology of a complex problem, especially in cases of inheritance. So that requires judges to make a breakthrough or ijtihad. In order for the resulting decisions actually contain the values of justice and benefit for the parties litigant.

Of the various forms of matter that enter the Islamic Court, the legacy of this case is the most complicated case, because when the case goes to court then there is a dispute Religious heritage in it. There are parties who feel aggrieved by the distribution system that has been done. Although Islamic law has been clear and concrete laid the parties are entitled to inheritance and its parts in detail.

Ijtihad procedure in cases of inheritance performed by judges of religious courts of Blitar has a stage, when dealing with inheritance cases, the judge refers to the law, when the law does not regulate, is less clear or set, but given the judges do not do not give benefits and fairness for the case, then the judge ijtihad. Ijtihad is based maslahah mursalah order to obtain the most fair decision for the plaintiff party. Maslahah used as basis by the judge in the exercise of ijtihad and the confidence gained through consideration of judges.